

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 03-0437P
Tax Administration—Penalty
For the Years 1997, 1998, 1999 & 2000

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ISSUES

I. Tax Administration—Penalty

Authority: 45 IAC 15-11-2

Taxpayer protests the 10% negligence penalty.

STATEMENT OF FACTS

The penalty was proposed in the first instance because the auditor determined taxpayer had not self-assessed and remitted sales and use tax even though taxpayer was aware of its duty to do so. Taxpayer argues that it had no intent to defraud or deprive the Department of the revenue owed.

I. Tax Administration-Penalty

DISCUSSION

Penalty assessments depend on a number of factors outlined in the regulation cited *supra*, and can be waived based on a showing of sufficient cause:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department finds the taxpayer did not act with reasonable care. Taxpayer freely admits mistakes were made, but that its intent was not to defraud the Department. Fraudulent intent is not one of the requirements for the negligence penalty to apply. The Department denies taxpayer's request to abate the 10% penalty assessment.

FINDING

Taxpayer's request to abate the 10% negligence penalty is denied.